

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Corieal Larome Holmes,)	Case No. 9:23-cv-03251-DCC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
United States of America,)	
)	
Defendant.)	
)	

This matter is before the Court on Plaintiff's amended complaint brought pursuant to the Federal Tort Claims Act ("FTCA"). ECF No. 19. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Molly H. Cherry for pre-trial proceedings and a Report and Recommendation ("Report"). On November 13, 2023, Defendant filed a motion to dismiss contending that this action is untimely. ECF No. 22. Plaintiff filed a response in opposition. ECF No. 25. On February 28, 2024, the Magistrate Judge issued a Report recommending that the motion be granted and this action be dismissed. ECF No. 26. Plaintiff filed objections.¹ ECF No. 31.

¹ Plaintiff requested and received an extension of time in which to file objections until April 5, 2024. While the Court did not receive his objections until April 17, 2024, it appears Plaintiff signed the document on April 3, 2024. Therefore, the Court will consider the objections to be timely filed. The Court specifically finds that, liberally construed, Plaintiff's motion for extension of time does not substantively add to his objections.

APPLICABLE LAW AND ANALYSIS

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

The Magistrate Judge recommends that the motion to dismiss be granted because Plaintiff failed to comply with the requirement that he file a civil action within 6 months of the final agency denial of his claim. As noted by the Magistrate Judge, it is undisputed that the United States Department of Justice denied his administrative claim on September 8, 2021. This action was not filed until July 2023.²

² The Court notes that the Magistrate Judge states that this action was filed on July 10, 2023. The Court considers it to have been filed on July 4, 2023. See *Houston v. Lack*, 487 U.S. 266 (1988). This small discrepancy does not alter the outcome of this action.

In his response and in his objections, Plaintiff argues that his earlier filed action brought pursuant to 42 U.S.C. § 1983 raised the same claims and he should be given the benefit of that filing date. Upon de novo review of the Report, the record, and the applicable law, the Court finds that the Magistrate Judge has properly analyzed this issue and incorporates her discussion by reference. Briefly, Plaintiff seems to be trying to relate a proposed amended complaint, which he was not permitted to file in his earlier action,³ back to his initial filing. There is no basis for this in the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 15(c). Accordingly, Plaintiff's objections are overruled.⁴

CONCLUSION

Accordingly, the Court agrees with the recommendation of the Magistrate Judge. The motion to dismiss [22] is **GRANTED** and this action is **DISMISSED**.

IT IS SO ORDERED.

April 25, 2024
Spartanburg, South Carolina

s/ Donald C. Coggins, Jr.
United States District Judge

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

³ *Holmes v. Borck*, 9:22-cv-00595-DCC, ECF No. 40.

⁴ To the extent Plaintiff contends that the Magistrate Judge failed to liberally construe his filings, the Court disagrees. Upon de novo review, the Court finds that the Magistrate Judge liberally construed Plaintiff's filings and notes that the undersigned has done the same.